

AUG 05 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DANIEL OMAR SIERRA-QUEZADA,

Defendant - Appellant.

No. 07-50236

D.C. No. CR-06-01582-LAB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges

Daniel Sierra-Quezada appeals the sentence imposed following his guilty plea to two counts of distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). He contends that the district court erred in denying him a minor role

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

adjustment under U.S.S.G. § 3B1.2. We have jurisdiction under 21 U.S.C. § 1291, and we affirm.

We review sentencing decisions for an abuse of discretion. *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc), *cert. denied*, 2008 WL 1815337 (U.S. May 19, 2008) (No. 07-10482). It is procedural error, and thus an abuse of discretion, for a district court to calculate the Sentencing Guidelines range incorrectly. *Id.* We review for clear error the district court's factual determination whether a defendant is a minor participant in the criminal activity. *United States v. Santana*, No. 05-50612, 2008 WL 1924963 (9th Cir. May 1, 2008).

Sierra-Quezada contends that he was a minor participant because he was a middleman who was involved in the distribution of two small quantities of methamphetamine over a 14-month period, made only \$50 for each transaction, and was not the supplier of the drugs. He argues that he did not initiate the transactions; rather, they were initiated by an informant, who was seeking a larger deal. As stated by the district court, Sierra-Quezada facilitated two hand-to-hand sales, and the record does not show that his will was overborne by the informant. The district court did not clearly err in finding that Sierra-Quezada was not substantially less culpable than other participants in the criminal activity. *See United States v. Flores-Payon*, 942 F.2d 556, 561 (9th Cir. 1991) (holding that

defendant who attended negotiations and brought drugs to scene was not entitled to downward adjustment under § 3B1.2).

AFFIRMED.